

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-07 H-02 INR-10 L-03

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INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

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E. O.11652: N/ A

TAGS: PFOR, GW

SUBJECT: CONSTITUTIONAL COURT DELIBERATIONS OF BAVARIAN
APPEAL ON BASIC TREATY

REF: BONN 7501

SUMMARY: THE FEDERAL CONSTITUTIONAL COURT HAS AGREED TO
JUDGE BAVARIA' S CLAIM THAT THE BASIC TREATY WITH THE
GDR IS CONTRARY TO THE BASIC LAW BUT IT HAS NOT YET
DECIDED WHETHER TO ENJOIN THE FEDERAL PRESIDENT FROM
SIGNING THE RATIFICATION BILL OF THE BASIC TREATY.
END SUMMARY

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1. CONSIDERATION BY THE FEDERAL CONSTITUTIONAL COURT OF THE REQUEST BY BAVARIA THAT THE FEDERAL PRESIDENT BE ENJOINED FROM SIGNING THE RATIFICATION BILL OF THE BASIC TREATY WITH THE GDR WAS DELAYED BY A FURTHER MOTION BY BAVARIA THAT ONE OF THE JUDGES (ROTTMANN) SITTING ON THE CASE BE BARRED FROM CONSIDERING THE ISSUE ON THE GROUND THAT HE HAD ALREADY PUBLICLY ASSERTED A VIEW AND THUS COULD NOT BE EXPECTED TO GRANT AN OBJECTIVE OPINION BASED ON THE EVIDENCE.

2. ON THE AFTERNOON OF MAY 29 THE COURT DECIDED NOT TO BAR ROTTMANN BUT AGREED TO CONSIDER BAVARIA' S ALLEGATION THAT THE BASIC TREATY IS CONTRARY TO THE BASIC LAW. ITS DELIBERATION WILL BEGIN ON JUNE 19 AND IT WILL ISSUE ITS DEFINITIVE OPINION BY JULY 31. IT DID NOT, HOWEVER, RULE ON THE ISSUE OF THE ENJOINER AND IS NOT NOW EXPECTED TO DO SO UNTIL JUNE 4.

3. COMMENT: THE COURT IS TAKING ITS TIME APPARENTLY IN THE HOPE THAT PRESIDENT HEINEMANN WILL SAY THAT HE DOES NOT INTEND TO SIGN THE RATIFICATION BILL UNTIL THE COURT DELIBERATIONS ARE COMPLETED, THUS REMOVING FROM THE COURT THE ONUS OF THE DECISION WHETHER OR NOT TO ISSUE AN ENJOINER. IT IS THE CURRENT VIEW OF THE FOREIGN OFFICE THAT IF THE COURT DECIDES NOT TO ISSUE THE ENJOINER, THE PRESIDENT WILL IMMEDIATELY SIGN THE RATIFICATION BILL AND ALSO THE BILL PERMITTING FRG APPLICATION FOR UN ENTRY. THE QUESTION WITH WHICH THE FOREIGN OFFICE IS CURRENTLY SEIZED IS WHAT SHOULD THE FEDERAL GOVERNMENT DO WITH REGARD TO UN ENTRY IF THE COURT DOES ENJOIN THE PRESIDENT FROM SIGNING THE RATIFICATION BILL. IT IS THE CONSENSUS OF OPINION THAT IN THE LATTER CASE THE LINKAGE BETWEEN THE TWO WILL HAVE TO BE BROKEN BECAUSE THE GDR WOULD NOT BE PREPARED TO WITHHOLD ITS OWN APPLICATION FOR UN ENTRY UNTIL THE COURT HAS MADE ITS ULTIMATE DECISION ON THE BASIC TREATY ISSUE.
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